

APPROVED



**SCOTTSDALE BOARD OF ADJUSTMENT
3939 N. Drinkwater Boulevard
Kiva at City Hall
Scottsdale, AZ
March 2, 2005
6:00 PM
MINUTES**

PRESENT: Terry Kuhstoss, Chair
Carol Perica, Vice Chair
Jennifer Goralski, Board Member
Ernest Jones, Board Member
Howard Myers, Board Member
James Vail, Board Member

ABSENT: Neal Waldman, Board Member

STAFF: Donna Bronski
Sherry Scott
Kurt Jones
Dan Symer
Joe Morris
Kira Wauwie

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Kuhstoss at 6:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MISCELLANEOUS AGENDA

1. Discussion of potential amendment to the Rules of Procedure for the Scottsdale Board of Adjustment (Rule 201) with regard to meeting times.

APPROVED 5-4-2005 BOA HEARING

Commissioner Myers moved that the fixed time for the Study Session of 5:00 be removed, and that a variable time of 5:00 or 5:30 be assigned. He moved that the Chair and Staff would assign the time on a monthly basis after reviewing the complexity of the cases. Vice-Chair Perica seconded the motion. The motion passed unanimously by a vote of six (6) to zero (0).

APPROVAL OF MINUTES

1. January 2, 2005

Commissioner Vail moved to approve the minutes as presented. Vice Chair Perica seconded the motion. The minutes were approved as presented by a vote of six (6) to zero (0).

REGULAR AGENDA

CHAIR KUHSTOSS explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. She also explained the format for applicant testimony and public comment. Chair Kuhstoss reminded the Applicants that they must receive four positive votes in order to obtain their variance request. She noted that, even though one Board Member was absent this evening, the four-vote requirement was still in effect. Chair Kuhstoss informed the applicants that they were at liberty to request a continuance prior to the presentation of their case, but that after presentation, the case would be voted upon.

3. 13-BA-2004 Milde Home Addition Request approval for a variance from Article V, Section 5.204E.1 regarding front yard setback requirements along Dusty Miller Court frontage on property with Single Family Residential, Environmentally Sensitive Lands, (R1-43 ESL) zoning and located at 39204 N Boulder View Drive.

Case 13-BA-2004 was withdrawn

4. 17-BA-2004 Young Residence Variance. Request approval for a variance from Article V, Section 5.404E.2 regarding front yard setback requirements on property zoned Single Family Residential, Planned Residential Development Overlay (R1-10 PRD) and located at 241 N 57th Street.

MR. DAN SYMER, staff planner, reviewed the case per the staff packet, pointing out, that at the time of platting and construction, the property was part of Maricopa County. He also noted the irregular shape of the lot and the presence of a wash, limiting expansion to the south. Mr. Symer noted two

letters and one phone call in support, and one phone call in opposition to the request.

JOE MORRIS, Community Development Engineer, reviewed that drainage issues relative to the subject property. In response to a question by Commissioner Myers, Mr. Morris stated that the city would not require storage of water as a condition of action or construction on the lot, and that removal or change to the flow conditions were not recommended. Mr. Morris stated that the city had conducted an analysis to determine how much water flows across the lot and the condition of that flow. He added that there were no projections or predictions relative to changes to the existing conditions.

COMMISSIONER VAIL referred to a statement by the Applicant that an addition on the southwest side of the property would impact water flow and be detrimental to the neighbor downstream. He asked if Mr. Morris would agree. Mr. Morris replied that he could not draw a conclusion as to the southwest side of the property, but stated that the proposed addition would have no effect on the water flow.

VICE CHAIR PERICA inquired as to the consequences of building on the south side of the property. Mr. Morris stated that a study would be required to ascertain those consequences, and that it would be the applicant's responsibility to do so.

MR. JASON ALLEN, Skyline Consultants, 111 W. Monroe St., Phoenix, AZ. 85003 addressed the board on behalf of the applicant. He pointed out that the applicant wished to convert the existing carport to a garage, and was requesting a reduction in the side yard setback. Mr. Allen referred to the encumbrances that limited options to the expansion: a leach field in the rear of the property, a pool at the other end, a significant wash running through the property, and an irregularly shaped lot located on a curve.

CHRIS WILSON, Metro/Land Consultant, 1850 N. Central Ave. Suite 525, Phoenix, AZ 85004, stated that an analysis was done relative to the existing condition. He observed that the water does back up on the southwest side, and stated that although he had not done an analysis relative to the southwest side, indicated that the water surface elevation within three feet of the west wall was enough proof that any addition built on that side would have a negative impact on downstream users.

CHAIR KUHSTOSS noted that there was no one requesting public comment, and opened discussion by the Commissioners.

COMMISSIONER MYERS stated that he ordinarily didn't like to grant variances such as this one, as it puts buildings closer together. He went on to state that there was water on one side of the house and that he had noted

some settling. As a result, Commissioner Myers agreed that the applicant could not build on that side of the house without impacting his and other properties, and stated that he would support the variance request.

COMMISSIONER GORALSKI stated that she too would support the request, given the nature of the home and the way it is situated on the lot.

VICE CHAIR PERICA noted initial concern about satisfying the criteria regarding the preservation of the privileges and rights of others, but in light of the evidence presented and the drainage situation, stated that she would support the request.

COMMISSIONER VAIL spoke in support of the variance. He referred to the possible disruption of the water flow as an important element in his decision.

COMMISSIONER JONES concurred with his fellow commissioners, and stated support for the variance.

CHAIR KUHSTOSS stated that she would not support the request as she felt that the situation was self-created. She added that it would be possible to make a garage out of the existing carport and still meet the required criteria.

Commissioner Myers moved to approve case 17-BA-2004. Commissioner Jones seconded the motion. The motion passed by a vote of five (5) to one (1), with Chair Kuhstoss dissenting.

5. 16-BA-2004 – Ho Residence. Request approval for a variance from Article V., Section 5.504.G.1 regarding wall heights within the required front yard for a wall to be constructed along the property line on Piccadilly Road on property located at 3918 N. 85th Street and zoned Single Family Residential (R1-7).

KIRA WAUWIE, project coordination manager, presented the case per the staff packet. She noted that there is an existing non-conforming wooden fence, which was present when the applicant purchased the property. Ms. Wauwie stated that the applicant wished to replace the wooden wall with a block wall, and had begun construction of that block wall. Ms. Wauwie stated that Code Enforcement had cited the applicant for that activity. She added that the wooden fence required repair and maintenance, could be maintained, but could be replaced with an alternative fence type. Ms. Wauwie responded to questions from the Commissioners. She noted that the applicant had presented a petition from a number of neighbors indicating support for the request.

AMY HO, 3918 N. 85th Street, Scottsdale, addressed the Board. She provided photographs of several other homes in the neighborhood similar to hers with block walls. She also noted that a block wall would be a much safer pool barrier, and that the neighborhood was very supportive.

CHAIR KUHSTOSS asked for discussion by Board Members.

COMMISSIONER GORALSKI stated that she would not be inclined to support the variance in light of the alternatives in terms of reconstruction of the wood fence. She noted that the wood fence would allow the applicant to enjoy the height she was used to.

VICE CHAIR PERICA spoke in favor of the variance. She stated that the four conditions had been met, although some were not as strong as she would prefer.

COMMISSIONER VAIL noted that it was a difficult decision, but that he too felt that the criteria had been met. He added that although he noted many walls in the neighborhood that exceeded the boundaries of good taste, stated that the block wall would be more attractive than the wooden fence. He stated that he would support the variance.

COMMISSIONER JONES observed that it was important to see the rise instead of the fall of neighborhoods, and stated his support for the variance.

COMMISSIONER MYERS stated that the four criteria had not been met, and noted that the applicant did have options. He commented that the rationale behind key lots was to prevent the homeowner from looking at someone's wall from ones own front yard. He added that it was not permitted for the Board to consider other cases in the neighborhood; that each case must be decided on its own merits. Commissioner Myers stated that he would not support the variance.

CHAIR KUHSTOSS noted that the ordinance provides that the existing non-conforming use can be retained, but does not allow it to be improved upon. She stated that circumstance was thus created by the applicant and that meeting the criteria had failed. She stated that she would not support the request.

Vice Chair Perica moved approval of case 16-BA-2004. Commissioner Jones seconded the motion. The motion failed by a vote of three (3) to three (3), with Chair Kuhstoss and Commissioners Goralski and Myers dissenting.

6. 1-BA-2005 – Offices @ Pinnacle Peak & Miller Roads. Request approval for a variance from Article V., Section 5.52204.E.1.b.

regarding minimum frontage open space setback requirements on property zoned Commercial Office, Environmentally Sensitive Lands (C-O ESL) and located southeast of the southeast corner of Pinnacle Peak and Miller Roads.

KURT JONES, Planning Director, presented the case per the staff packet. He pointed out that the site had been zoned Commercial Office with an Environmentally Sensitive Overlay as a result of a case in 1990. He noted that staff acknowledges all of the issues presented by the applicant with respect to the open space requirement.

LYNN LAGARDE, 3101 N. Central, Phoenix, AZ. Addressed the Board on behalf of the applicant. She stated that the background of the property goes back to 1970?, when it was part of two companion zoning cases for a retail center with 5 two-story buildings, 210,000 square feet and large parking fields. She noted that the current proposal is for ten individual lots for small owner users. She added that the office campus would have more a residential character, with buildings more compatible with the adjacent residential area.

MS. LAGARDE reviewed the four criteria, and noted that the applicant had agreed to implement a platting process in order to improve the consistency of the area. She pointed out that no one realized that it would create open space problems that would make it so difficult for the small office option. Subsequently, Ms. Lagarde stated that the applicant was not asking for a reduction in total open space, and that each lot would meet the open space requirement. She noted that the applicant was only seeking relief from the placement of the open space.

VICE CHAIR PERICA stated that she felt the applicant had met the four criteria. She voiced her support of the variance especially due to the fact that the open space requirements have been met for all intents and purposes.

COMMISSIONER VAIL provided his support of the variance and endorsement of the project. He stated that the four criteria had been met and that the project would be far more attractive than a multi story project.

COMMISSIONER JONES also commended the applicant for the project and stated that he would support the request.

COMMISSIONER MYERS disagreed; stating that he did not believe the four criteria had been satisfied. He pointed out that the property had been purchased with the restrictions in place. He also expressed concern as to the possible impact on open space and openness of the project given that there are no other restrictions on building height or other parameters.

COMMISSIONER GORALSKI applauded the plan, which she stated would improve the area. She voiced support for the request, as the four criteria had been met.

CHAIR KUHSTOSS stated her belief that the plan was workable, and best suited to maximize the open space. She noted that she was comfortable that the four criteria had been met and supported the variance request.

Commissioner Vail moved to approve case 1-BA-2005 as presented. Commissioner Jones seconded the motion. The motion passed by a vote of five (5) to one (1), with Commissioner Myers dissenting.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:30 PM.

Respectfully submitted,

"For the Record" Court Reporters